

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CRAIG MOSKOWITZ and BARBARA MOSKOWITZ,
each on their own behalf, and as parents on behalf of their
minor child, S.M.,

Plaintiffs,

-against-

Case No. 20-cv-1659

MOTION TO DISMISS
DECLARATION

GREAT NECK UNION FREE SCHOOL DISTRICT,
THE BOARD OF EDUCATION OF THE GREAT NECK
UNION FREE SCHOOL DISTRICT, DANA SLACKMAN,
DR. GABRIELLA DUKE, KATE MUGNO, ROBIN
TRICHON, DR. ANTHONY IACOVELLI, LUCIANA
BRADLEY, and SARA GOLDBERG, each Individually,
and in their respective official capacities,

Defendants.

-----X

MAUREEN CASEY, pursuant to 28 U.S.C. § 1746, declares:

1. I am a member of the law firm of Ahmuty, Demers & McManus attorneys for the defendant, Dana Slackman, and I am familiar with the facts and circumstances surrounding this matter.

2. I submit this declaration in support of a motion seeking dismissal of the plaintiffs' complaint against Dana Slackman pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure upon the grounds that plaintiffs have failed to state a cause of action against Dana Slackman.

Procedural History

3. On April 1, 2020, plaintiffs commenced this action in the United States District Court for the Eastern District of New York. (Exhibit "A") On August 13, 2020 a pre-motion conference was conducted. The Court granted permission for this motion and on September 11, 2020 the Court established a scheduling order for the motion to dismiss.

Summary of Factual Background

4. This action addresses two distinct claims by plaintiffs. First that while the infant plaintiff was a fourth and fifth grade student at the Saddle Rock Elementary School he was harassed and bullied by fellow classmates and by School District administrators and employees. (Exhibit “A”, paras. 1, 34, 39, 41, 43, 44) Secondly, that the infant plaintiff was improperly restrained on April 1, 2019. (Exhibit “A”, paras. 47, 48) Dana Slackman was an independent contractor (Exhibit “A”, para. 20) hired to provide behavior consultation services for the 2018-2019 school year as needed. (Exhibit “B”, Outside Service Agreement)

5. Plaintiffs’ complaint and each of the 17 cause of action is premised upon allegations that “defendants” collectively violated the “constitutional rights, federal and state disability and civil rights, and federal, state and local rights and laws” (Exhibit “A”, para. 2) of not only the infant plaintiff but also of the plaintiff parents.

6. The sole, specific claim against Dana Slackman is an allegation that on April 1, 2019 she purportedly stared at, taunted and threatened the infant plaintiff and when he left the classroom she along with three school employees physically restrained him. (Exhibit “A”, paras. 47, 48)

Summary of Argument

7. As set forth in more detail in the accompanying memorandum of law, Dana Slackman is entitled to dismissal of the complaint upon the grounds that plaintiffs have failed to state a cause of action because she was not an employee of the School District and therefore not a state actor; she is entitled to qualified immunity for the steps she undertook to protect the infant plaintiff from his self-injurious behavior and to protect others from harm; and plaintiffs have failed to substantiate the alleged constitutional violations and state tort claims. Further, as an

independent contractor she had no role nor responsibility supervising students or the infant plaintiff specifically or addressing the allegation of harassment and bullying that predate the infant plaintiff's episode on April 1, 2019.

8. Dana Slackman requests that the Court enter an order in her favor dismissing the complaint in its entirety with prejudice.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 9, 2020, at Albertson, New York.

Dated: Albertson, New York
October 9, 2020

Respectfully submitted,

Maureen Casey

MAUREEN CASEY (6496)
AHMUTY, DEMERS & McMANUS, ESQS.
Attorneys for Defendant
Dana Slackman
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: MIG 040820 MC

To:
VIA Email & Federal Express – Overnight Mail

lbarbieri@advocatesny.com

Laura D. Barbieri, Esq.
Advocates for Justice Chartered Attorneys
Arthur Z. Schwartz
Counsel for Plaintiffs
225 Broadway, Suite 1902
New York, New York 10007
(212) 285-1400

mmiranda@msssv.com

Michael A. Miranda, Esq.
Miranda Slone Sklarkin Verveniotes, LLP
Attorneys for Defendant
GREAT NECK UNION FREE SCHOOL DISTRICT,
THE BOARD OF EDUCATION OF THE GREAT NECK
UNION FREE SCHOOL DISTRICT, DR. GABRIELLA
DUKE, KATE MUGNO, ROBIN TRICHON, DR.
ANTHONY IACOVELLI, LUCIANA BRADLEY
and SARA GOLDBERG, each Individually,
and in their respective official capacities,
The Esposito Building
240 Mineola Blvd.
Mineola, New York 11501
(516) 741-7676